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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,373	01/21/2000	Edward J. Koplar	55121-88011	5751

7590 12/04/2003

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EXAMINER

SALTARELLI, DOMINIC D

ART UNIT PAPER NUMBER

2611

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/489,373

Applicant(s)

KOPLAR ET AL.

Examiner

Dominic D Saltarelli

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 71-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 71-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,6 . 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claims 72, 76, and 97 are objected to because of the following informalities:

Regarding claim 72, line 1, the "radio signal source" should be changed to --radio frequency receiver-- to be consistent with claim 71, line 5.

Regarding claim 76, lines 4-5 read "during the material", and it would be more clear for the claim to read "during presentation of the material".

Regarding claim 97, line 6, "user of the hand-held device" should be changed to --user of a hand-held device--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 74 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 74 refers to "the display" but does not specify if "the display" refers to "a display device" in claim 1, line 1, or "a display disposed on the hand-held device" in claim 73.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 72 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

The specification discloses (page 38 line 24– page 39 line 15) FM receiver 62 for receiving radio frequency signals.

The specification fails to adequately describe “the radio signal source is a decoder box for demodulating the promotional opportunities received from the source” as now recited in claim 72.

The “decoder box” is considered new matter and must be cancelled from the claim.

In order to advance prosecution on the merits, Examiner interprets the decoder box to be an FM receiver as described (page 38 line 24– page 39 line 15).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 71-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon et al. (5,789,732) [McMahon] in view of Nemirofsky (5,594,493).

Regarding claim 71, McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving promotional opportunities (col. 4, lines 3-9) from a display device (col. 3, lines 58-61) and a radio signal source (col. 3, lines 66-67), the hand-held device comprising: a photodetector (50) disposed on the hand-held device for receiving the promotional opportunities from the display device (col. 4, lines 52-65); a radio frequency (RF) receiver disposed on the hand-held device for receiving the promotional opportunities transmitted from the radio signal source (col. 4, lines 3-9); and a memory disposed on the hand-held device for storing the promotion opportunities (col. 1 line 67 – col. 2 line 1).

McMahon also teaches the concurrent use of optical and RF forms of communication between the hand-held device and a point-of-sale terminal (col. 5, lines 21) eliminating the line of sight requirement between the hand-held device and point-of-sale terminal.

McMahon fails to disclose a central processing unit (CPU) and circuitry disposed on the hand-held device for processing the promotional opportunities received by the hand-held device and coupled to the memory, and a decoding means on the hand-held device for decoding the promotional opportunities from the display device.

Nemirofsky discloses a hand-held device (col. 9, lines 54-60), which receives data from a display device (3) (col. 7, lines 30-33), with an imbedded

CPU (10) and other circuitry coupled to a memory (30) (col. 10, lines 9-13) for processing and storing promotional opportunities received by the hand-held device (Abstract, lines 4-6), and a decoding means, which is present in the hand-held device inherently, since the data transmitted from the display device is encoded (col. 14, lines 1-13), and so must be decoded in order to be read.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device disclosed by McMahon to include a CPU coupled the memory for processing the promotional opportunities, and a decoding means for decoding the promotional opportunities received from the display device, as taught by Nemirofsky. The reason for doing so would be to provide a stable means for decoding, processing and storing promotional opportunities received by the hand-held device from the display device.

Regarding claim 72, McMahon and Nemirofsky disclose the hand-held device of claim 71, which is characterized in that the radio signal source is a decoder box for demodulating the promotional opportunities received from the source (McMahon, col. 5, lines 6-21), since all RF transmissions lie in the RF frequency band, and must be demodulated by a circuit on the hand-held device to the operating frequency of the hand-held device's circuitry.

Regarding claim 73, the modified hand-held device disclosed by McMahon and Nemirofsky disclose the hand-held device of claim 71, and is characterized

in that a display (McMahon, Figure 1, item 20) is disposed on the hand-held device to present the promotional opportunities received (McMahon, col. 1 line 65 – col. 2 line 2).

Regarding claim 74, the modified hand-held device disclosed by McMahon and Nemirofsky disclose the hand-held device of claim 73, and is characterized in that the display is an LCD (McMahon, Figure 1).

Regarding claim 75, McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving data containing promotional opportunities (col. 4, lines 3-9) from a radio signal source (col. 3, lines 66-67), the hand-held device comprising: a radio frequency (RF) receiver disposed on the hand-held device for receiving the data transmitted from the radio signal source (col. 4, lines 3-9); a radio receiver on the hand-held device for demodulating the data received from the radio signal source to obtain promotional opportunities is inherent, since RF transmissions lie the in the RF frequency band, and must be demodulated to the operating frequency of the hand-held device's circuitry; and a memory disposed on the hand-held device for storing the promotion opportunities (col. 1 line 67 – col. 2 line 1).

McMahon fails to disclose a central processing unit (CPU) and circuitry disposed on the hand-held device for processing the promotional opportunities received by the hand-held device and coupled to the memory.

Nemirofsky discloses a hand-held device (col. 9, lines 54-60) with an imbedded CPU (10) and other circuitry coupled to a memory (30) (col. 10, lines 9-13) for processing and storing promotional opportunities received by the hand-held device (Abstract, lines 4-6).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device disclosed by McMahon to include a CPU coupled the memory for processing the promotional opportunities received from the demodulation of the data by the hand-held device as taught by Nemirofsky. The reason for doing so would be to provide a stable means for processing and storing promotional opportunities received by the hand-held device.

8. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walkingshaw et al. (5,488,423) [Walkingshaw] in view of Von Kohorn (5,249,044).

Regarding claim 76, Walkingshaw discloses a device (100) for providing one or more promotional opportunities prestored on the device in conjunction with material presented by a source from the reception of auxiliary data from the source (col. 3 line 59 – col. 4 line 3), the device comprising a receiver (120) disposed on the device for receiving auxiliary data from the source during presentation of the material, and a central processing unit (130) and other circuitry disposed on the device which compares the auxiliary data received against pre-stored data that triggers one or more pre-stored promotional opportunities for a user of the hand-held device.

Walkingshaw fails to disclose the device is a hand-held device.

Von Kohorn discloses a device [generating unit (14)] which generates and dispenses promotional opportunities [coupons] (col. 3, lines 45-52) that is shown to be hand held for convenient use in Figure 1.

It would have been obvious at the time to a person of ordinary skill in the art to modify the device disclosed by Walkingshaw to be a hand-held device as taught by Von Kohorn. The reason for doing so is make the device more convenient to use.

9. Claims 77-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walkingshaw and Von Kohorn as applied to claim 76 above, and further in view of McMahon.

Regarding claim 77, Walkingshaw and Von Kohorn disclose the hand-held device of claim 76, but fail to disclose the source is a display device and the receiver is a photodetector.

McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving promotional opportunities (col. 4, lines 3-9) from a display device (col. 3, lines 58-61) and a photodetector (50) disposed on the hand-held device for receiving the promotional opportunities from the display device (col. 4, lines 52-65), removing the need for direct contact with the signal source (col. 4, lines 3-9).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Walkingshaw and Von Kohorn to make the

source a display device and the receiver a photodetector, as taught by McMahon, for the advantage of removing the need for direct contact with the signal source.

Regarding claim 78, the modified hand-held device of Walkingshaw and Von Kohorn discloses the hand-held device of claim 76, but fails to disclose the source is a radio signal source and the receiver is a radio frequency receiver.

McMahon discloses a radio signal source (col. 3, lines 66-67) and a hand-held device with a radio frequency receiver disposed on the hand-held device for receiving the promotional opportunities transmitted from the radio signal source (col. 4, lines 3-9), removing the need to physically manipulate or aim the hand held device in order to receive the promotional opportunities (col. 4, lines 23-27).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Walkingshaw and Von Kohorn to make the source a radio signal source and the receiver is a radio frequency receiver, as taught by McMaho, for the advantage of removing the need to physically manipulate or aim the hand held device in order to receive the promotional opportunities.

Regarding claim 79, the modified hand-held device of Walkingshaw and Von Kohorn discloses the hand-held device of claim 76, but fails to disclose the source is a display device and a radio signal source.

McMahon discloses a source of promotional opportunities which includes both a display device [touch screen] (col. 3, lines 58-61) and a radio signal source (col. 3, lines 66-67), allowing the user to access the promotional opportunities without requiring contact between the hand-held device and the signal source (col. 4, lines 3-9).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Walkingshaw and Von Kohorn to make the source a display device and a radio signal source, as taught by McMahon, for the advantage of allowing the user to access the promotional opportunities without requiring contact between the hand-held device and the signal source.

Regarding claim 80, the modified hand-held device of Walkingshaw and Von Kohorn discloses the hand-held device of claim 77, but fails to disclose the receiver is both a photodetector and a radio frequency receiver.

McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving promotional opportunities (col. 4, lines 3-9), a photodetector (50) disposed on the hand-held device for receiving the promotional opportunities (col. 4, lines 52-65) and a radio frequency (RF) receiver disposed on the hand-held device for receiving the promotional opportunities (col. 4, lines 3-9). Both devices obviate the need to physically connect the hand-held device to the source of promotional opportunities, and the RF receiver eliminates the line of sight requirement (col. 5, lines 18-21).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Walkingshaw and Von Kohorn to make the receiver both a photodetector and a radio frequency receiver, as taught by McMahon, for the advantage of obviating the need to physically connect the hand-held device to the source of promotional opportunities and to remove the line of sight requirement.

10. Claim 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon, in view of Gottlich et al. (6.024,288) [Gottlich] and Nemirofsky.

Regarding claim 81, McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving promotional opportunities (col. 4, lines 3-9) presented by a source (col. 3, lines 58-67) to a user of the hand-held device, the hand-held device comprising a receiver disposed on the hand held device for processing the promotional opportunities from the source (Figure 2, item 50, col. 4, lines 3-9), and a memory disposed on the hand-held device for storing the promotion opportunities (col. 1 line 67 – col. 2 line 1), and a display (20) is disposed on the hand-held device to present the promotional opportunities received (col. 1 line 65 – col. 2 line 2).

McMahon fails to disclose the promotional opportunities are relative.

McMahon additionally fails to disclose the hand-held device comprises a central processing unit and other circuitry coupled to the memory disposed on the hand-held device for processing the promotional opportunities received by

the hand-held device, and for the display disposed on the hand-held device for is a nonalphnumeric display for displaying respective levels of relative promotional opportunities to the user of the hand-held device.

Gottlich discloses a hand-held device (10) (col. 7, lines 36-39) that can receive and display relative promotional opportunities, relative in the sense that they occur in respective levels, in order to encourage behavior that will achieve the next award level identified (col. 15, lines 24-37).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device disclosed by McMahon to make the promotional opportunities relative promotional opportunities with respective levels, as taught by Gottlich, for the advantage of encouraging behavior that will achieve the next award level.

Nemirofsky discloses a hand-held device (col. 9, lines 54-60) that receives promotional opportunities [benefits] (col. 7, lines 40-45) from a source (3), with an imbedded CPU (10) and other circuitry coupled to a memory (30) (col. 10, lines 9-13) for processing and storing promotional opportunities received by the hand-held device (Abstract, lines 4-6), and a nonalphnumeric display disposed on the handheld device (col. 11, lines 3-9), allowing the display to present anything from a picture or character anywhere on the display.

It would have been obvious to further modify the hand-held device of McMahon and Gottlich to include a CPU and other circuitry coupled to the memory disposed on the hand-held device for processing the promotional

opportunities received by the hand-held device, and for the display disposed on the hand-held device to be a nonalphanumeric display for displaying the respective levels of relative promotional opportunities to the user of the hand-held device, as taught by Nemirofsky, for the advantage of providing a stable means for processing and storing promotional opportunities received by the hand-held device and allowing the display to present anything from a picture or character anywhere on the display.

Regarding claim 82, the modified hand-held device disclosed by McMahon, Gottlich, and Nemirofsky describes the hand-held device of claim 81, and is characterized in that the source is a display device [touchscreen display] (McMahon, col. 3, lines 58-61) and the receiver is a photodetector (McMahon, Figure 2, item 50).

Regarding claim 83, the modified hand-held device disclosed by McMahon, Gottlich, and Nemirofsky describes the hand-held device of claim 81, and is characterized in that the source is a radio signal source (col. 4, lines 3-9) and the receiver is a radio frequency receiver, since in order for the radio signal source to communicate with the hand-held device, a radio frequency receiver would have to be present.

Regarding claim 84, the modified hand-held device disclosed by McMahon, Gottlich, and Nemirofsky describes the hand-held device of claim 81, but fails to disclose the receiver is both a photodetector and a radio frequency receiver.

McMahon further teaches the concurrent use of optical and RF forms of communication between the hand-held device and a point-of-sale terminal (col. 5, lines 21) eliminating the line of sight requirement between the hand-held device and point-of-sale terminal.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device disclosed by McMahon, Gottlich, and Nemirofsky to dispose both the photodetector and RF receiver on the same hand-held device, as taught by McMahon, for the advantage of eliminating the line of sight requirement.

11. Claims 85 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon, Gottlich, and Nemirofsky, as applied to claim 81 above, and further in view of Bullock et al. (5,070,404) [Bullock].

Regarding claims 85 and 88, McMahon, Gottlich and Nemirofsky discloses the hand-held device of claim 81, but fail to disclose the indication display is a plurality of LEDs and wherein the respective levels illuminate at least one LED corresponding to one or more promotional opportunities received by the hand-held device.

Bullock teaches a device with a display comprising separate indicator LEDs (col. 7, lines 25-34), one for each type or class of promotional opportunities or auxiliary data received by the device, indicating to the user which promotional opportunities are available.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device disclosed by McMahon, Gottlich and Nemirofsky to make the indication display a plurality of LEDs and wherein the respective levels illuminate at least one LED corresponding to one or more promotional opportunities received by the hand-held device, as taught by Bullock, for the advantage of indicating to the user which promotional opportunities are available.

12. Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMahon, Gottlich, Nemirofsky, and Bullock as applied to claim 85 above, and further in view of Brooks et al. (5,483,276) [Brooks].

Regarding claim 86, McMahon, Gottlich, Nemirofsky and Bullock describe the hand-held device of claim 85, but fail to disclose the LEDs are either the same color or different colors for providing an indication of the promotional opportunities or auxiliary data received by the hand-held device.

Brooks discloses using a plurality of LEDs of different colors, in order to provide color-coded messages as indicators (col. 8, lines 1-3).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of McMahon, Gottlich, Nemirofsky and Bullock to include LEDs of different colors for providing an indication, as taught by Brooks, for the advantage of providing color coded indications to distinguish information, (i.e. promotional opportunities).

Regarding claim 87, McMahon, Gottlich, Nemirofsky, Bullock, describe the hand-held device of claim 85, but fail to disclose the respective levels are successive illuminating LEDs corresponding to the relative promotional opportunities received by the hand-held device.

Brooks discloses the use of a plurality of LEDs to form a pattern indicative of received auxiliary data. Using successive LEDs to represent successive levels of received promotional opportunities is a very minor variation of the embodiment presented by Brooks.

It would have been obvious at the time to a person of ordinary skill in the art to alternatively modify the hand-held device disclosed by McMahon, Gottlich, Nemirofsky, and Bullock to represent the respective levels of relative promotional opportunities with successive illuminating LED's corresponding the relative promotional opportunities received by the hand-held device, for the advantage of providing a technique to distinguish promotional opportunities.

13. Claims 89, 90, 91, 95, and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky in view of Gaucher (4,851,651).

Regarding claim 89, Nemirofsky discloses a hand-held device (col. 9, lines 54-60) for providing promotional opportunities communicated to and processed by a computer for redemption (col. 16, lines 1-11), the hand-held device comprising: a receiver disposed on said hand-held device for receiving the promotional opportunities from a source (col. 3, lines 42-49); a central processing unit (10) and other circuitry disposed (col. 10, lines 1-19) on the hand-held device for processing the promotional opportunities received by the hand-held device; a memory (30) disposed on the hand-held device and coupled to the CPU for storing the promotional opportunities; and a computer interface means [bar code] (42) (col. 7, lines 42-45, 53-56) on the hand-held device for communicating with the computer for the processing of the promotional opportunities.

Nemirofsky fails to disclose the hand-held device is presented by a source to a user of the hand-held device.

Gaucher discloses a device which dispenses hand-held devices to users of the hand-held device (Figure 1) (col. 1, lines 43-45) for the benefit of providing said hand-held devices to a user from a common terminal.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Nemirofsky to be presented by a source to a user of the hand-held device as taught by Gaucher. The reason for doing so would be to provide the hand-held devices to a user from a common terminal.

Regarding claim 90, the modified hand-held device disclosed by Nemirofsky and Gaucher is characterized in that a decoder disposed on the hand-held device for decoding the promotional opportunities received from the source, since the source is described as transmitting encoded promotional opportunities to the hand-held (Nemirofsky, col. 14, lines 1-13).

Regarding claim 91, the modified hand-held device disclosed by Nemirofsky and Gaucher is characterized in that the source is a display device (Nemirofsky, Figure 1, item 3) (Nemirofsky, col. 3, lines 42-45) and the receiver is a photodetector (Nemirofsky, Figure 7, item 70) (Nemirofsky, col. 7, lines 56-58).

Regarding claim 95, the modified hand-held device disclosed by Nemirofsky and Gaucher is characterized in that the computer interface is a portable data storage for transferring the promotional opportunities to the computer (Nemirofsky, LCD 42 is coupled to memory 30, col. 10, lines 1-18).

14. Claim 96 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky and Gaucher as applied to claim 89 above, and further in view of Robb (6,177,950).

Regarding claim 96, Nemirofsky and Gaucher disclose the hand-held device of claim 89, and additionally teach visual conformation of good data

reception (Nemirofsky, col. 11, lines 36-37), but fail to disclose an aiming light which serves as an indication that the hand-held device is suitably oriented to receive promotional opportunities.

Robb teaches the use of indicator lights to advise a user on the correct usage of a hand held device (col. 6, lines 29-31)

It would have been obvious at the time to further modify the hand-held device of Nemirofsky and Gaucher to include an aiming light as an indication that the hand-held device is suitably oriented [the correct usage of the device] to receive promotional opportunities, as taught by Robb. The reason for doing so would be to provide visual conformation of good data reception.

15. Claims 92, 93, and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky and Gaucher as applied to claim 89 above, and further in view of McMahon.

Regarding claim 92, Nemirofsky and Gaucher disclose the hand-held device of claim 89, but fail to disclose the source is a radio signal source and the receiver is a radio frequency receiver.

McMahon discloses a hand-held device (10) (col. 1, lines 65-67) for receiving promotional opportunities (col. 4, lines 3-9) from a radio signal source (col. 3, lines 66-67), the hand-held device comprising a radio frequency (RF) receiver disposed on the hand-held device for receiving the promotional opportunities transmitted from the radio signal source (col. 4, lines 3-9). The use

of RF technology eliminates the line of sight requirement (col. 5, lines 18-21) associated with similar optical devices.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Nemirofsky and Gaucher so that the source is a radio signal source and the receiver is a radio frequency receiver, as taught by McMahon, for the advantage of eliminating the line of sight requirement associated with similar optical devices.

Regarding claims 93 and 94, the hand-held device of Nemirofsky and Gaucher discloses the hand-held device of claim 89, but fails to disclose the source includes a radio signal source and the receiver includes a radio frequency receiver.

McMahon teaches the concurrent use of optical and RF forms of communication between hand-held devices and a point-of-sale terminal (col. 5, lines 21) eliminating the line of sight requirement between the hand-held device and point-of-sale terminal.

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Nemirofsky and Gaucher to make the source include a radio signal source and for the receiver to include a radio frequency receiver, as taught by McMahon, for the advantage of eliminating the line of sight requirement between the hand-held device and source.

16. Claim 97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky in view of McMahon and Dominguez (5,946,635).

Regarding claim 97, Nemirofsky discloses a method of interactive advertising and promotion in connection with a user's observance of events (Abstract, lines 1-3) comprising: transmitting auxiliary data related to such events (col. 3, lines 58-63), wherein the auxiliary data is associated with sponsors and carries promotional opportunities of special significance relative to the event, the sponsor and the promotional opportunities are of special value to the user (col. 4, lines 3-6), providing means for receiving the auxiliary data for the user of a hand-held device (col. 4, lines 36-41) while it views the events on a display device (3), and providing benefit to the user of the hand-held device (col. 5, lines 45-50) for selectively receiving (col. 11, lines 32-35) the promotional opportunities (col. 3 line 64 – col. 4 line 3), the hand-held device being capable of retaining indication of having received the promotional opportunities (col. 11, lines 46-55).

Nemirofsky fails to disclose the events observed are sporting, racing, or other special events, and that the device is capable of selectively receiving the auxiliary data from a radio signal source, and to provide a means on the hand-held device for receiving the auxiliary data for the user of the hand-held device while the user attends the events.

McMahon teach the concurrent use of optical and RF forms of communication between a hand-held device and a point-of-sale terminal (col. 5,

lines 21) eliminating the line of sight requirement between the hand-held device and point-of-sale terminal.

Dominguez discloses a method utilizing a hand-held device (10) (col. 4, lines 6-7) for receiving auxiliary data from a radio signal source (col. 1, lines 15-20) which can be used while the user attends a special event, such as racing. This method allows user interactivity with said event while the user attends the event (col. 2, lines 43-50).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Nemirofsky to include the capability to selectively receive auxiliary data from a display device and a radio signal source, as taught by McMahon, for the advantage of eliminating the line of sight requirement associated with optical reception.

It would have been obvious at the time to a person ordinary skill in the art to further modify the method of Nemirofsky and McMahon to provide a means for receiving the auxiliary data for the user of the hand-held device while the user attends events, such as racing, as taught by Dominguez, allowing interactivity with said event while the user attends the event.

17. Claim 100 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky in view of Wagner (5,742,845).

Regarding claim 100, Nemirofsky discloses a method of purchasing a desired product through interactive advertising form a source (col. 3, lines 42-56

and col. 5, lines 45-50), the method comprising: supplying a user with a hand-held device (col. 9, lines 54-60) capable of capturing a promotional opportunity relative to a desired product from the source (col. 3, lines 50-63), capturing the promotional opportunity relative to the desired product on the hand-held device by the user (col. 3 line 64 – col. 4 line 3), and supplying a third party with the hand-held device of the user containing the promotional opportunity (col. 4, lines 3-6).

Nemirofsky fails to disclose utilizing a hand-held device with a computer interface capable of connection to a computer with Internet access to purchase the desired product for the user.

Wagner discloses a transaction and data system (col. 5, lines 35-43) which would allow a hand-held device with a computer interface capable of connection to a computer with Internet access (col. 6, lines 27-34) to purchase desired products (col. 6, lines 35-42). Such a system allows hand-held devices access to the Internet for purchasing desired products where such access was not previously possible (col. 6, lines 16-20).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Nemirofsky to include a hand-held device with a computer interface capable of connection to a computer with Internet access to purchase the desired product for the user, as taught by Wagner, for the advantage of allowing the hand-held device access to the Internet for purchasing desired products where such access was not previously possible.

18. Claim 101 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky in view of Wagner and Lappington et al. (5,343,239) [Lappington].

Regarding claim 101, Nemirofsky discloses a method of interactive advertising and promotion relative to material presented by a display device (col. 3, lines 58-63) comprising: transmitting auxiliary data during the presentation of the material, where the auxiliary data is associated with a sponsor of the material, receiving the auxiliary data by a hand-held device while the user views the events of a display device (col. 11, lines 30-36), and providing a benefit to the user of the hand-held device by means of the auxiliary data received by the hand-held device (col. 11, lines 36-43) for the selective reception of the auxiliary data by the user.

Nemirofsky fails to disclose the hand-held device has a computer interface for connection to a computer with Internet access, and that the benefit is provided to the user via said computer, and that the user receives auxiliary data during a special event or game of skill or chance.

Wagner discloses a transaction and data system (col. 5, lines 35-43) which would allow a hand-held device with a computer interface capable of connection to a computer with Internet access (col. 6, lines 27-34) to purchase desired products (col. 6, lines 35-42). Such a system allows hand-held devices access to the Internet for purchasing desired products where such access was not previously possible (col. 6, lines 16-20).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Nemirofsky to include a computer interface for connection to a computer with internet access for providing a benefit to the user of the hand-held device, as taught by Wagner, allowing the hand-held device access to the Internet for providing said benefit where such access was not previously possible.

Lappington discloses a television system which associates auxiliary [interactive] data with special events [sports events] or games of skill or chance [quiz show] (col. 15, lines 45-50), allowing user interactivity with said events (col. 16, lines 1-3).

It would have been obvious at the time to a person of ordinary skill in the art to further modify the method disclosed by Nemirofsky and Wager for the user to receive auxiliary data during a special event or game of skill or chance, as taught by Lappington, for the advantage of allowing user interactivity with said events.

19. Claims 98, 99, and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky in view of Boggs et al. (4,789,371) [Boggs].

Regarding claims 98, 99, and 102, Nemirofsky discloses a method of interactive advertising and promotion relative to material presented by a display device (col. 3, lines 50-57) comprising: transmitting auxiliary data during presentation of the material, where the auxiliary data is associated with a

sponsor of the material and carries promotional opportunities (col. 3, lines 58-63), providing means for receiving the auxiliary data for users of a hand-held device while they view the events on a display device [photoelectric pickup device within the smart card], and providing a benefit to the user of the hand-held device for selectively receiving the promotional opportunities (col. 11, lines 30-35), the hand-held device being capable of retaining indication of having received the promotional opportunities (LCD 42) (col. 11, lines 53-55), this indication comprises a means for presenting to the user the promotional opportunities received by means of the auxiliary data.

Nemirofsky fails to disclose making the hand-held device resemble a snap-shot camera with a simulated lens so as to suggest to the user a camera-like method of using the hand-held device to obtain the auxiliary data.

Boggs discloses a toy camera that resembles a snap-shot camera and a simulated lens (12) which simulates a real camera (col. 2, lines 41-47) for the advantage of providing a familiar mechanism to simulate an image pickup device (col. 2, lines 60-68 and col. 4, lines 5-11).

It would have been obvious at the time to a person of ordinary skill in the art to modify the hand-held device of Nemirofsky to make the hand-held device resemble a snap-shot camera with simulated lens, as taught by Boggs, for the advantage of providing a familiar camera-like structure for using the hand-held device to pick up data by pointing at the data.

Art Unit: 2611

Conclusion

20. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Art Unit: 2611

Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D Saltarelli whose telephone number is (703) 305-8660. The examiner can normally be reached on M-F 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the primary examiner, Christopher Grant can be reached on (703) 305-4755. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Dominic Saltarelli
Patent Examiner
Art Unit 2611

DS


CHRIS GRANT
PRIMARY EXAMINER